IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

APPEAL FROM ORDER NO.948 OF 2004
IN
NOTICE OF MOTION NO.4362 OF 2004
IN
L.C.SUIT NO.5045 OF 2004

Machindra G. Tule).. Appellant
(Org.Plaintiff)

Versus

The Municipal Corporation of Greater Bombay)).. Respondent
(Org.Defendant)

Mr.S.S.Redekar for the Appellant.

Mr.J.Xavier for the Respondent.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 3RD NOVEMBER 2004

P.C.:

. The Appellant has come to this Court claiming that the suit structure which was demolished on 25th August 2004 is still in existence and it should be protected during the hearing of the Motion. Various photographs have been annexed to the Appeal Memo showing some structure. However, these photographs do not bear the date on which the photographs were taken. Furthermore, Mr.Xavier for the Corporation produced a photograph of today's date taken at 12.40 p.m. showing that the suit structure is not in existence. An application was made by the Corporation to the Senior Police Inspector, Ghatkopar Police Station to inform them

as to whether the suit structure is in existence. Fortunately, the police have acted immediately and have issued a letter to them bearing today's date indicating that there is no hawker sitting unauthorisedly or illegally nor is there any temporary stall constructed or unauthorised table nor is there a stall constructed by one M.G.Tule, the Appellant herein.

2. Obviously, therefore, the Appellant has made a false statement about the existence of the stall. Documents produced by him indicate the dishonesty of the Appellant. On 25th August 1994 an application was made by him stating that since his stall has been in existence for the past 15 years, permission should be granted to him to repair the same. Thereafter on 21st November 1994 the Appellant applied for a shops licence under Bombay Shops & Establishments Act stating in his application that he was selling belts from the suit structure for the past ten years and, therefore, requested that a shops licence be issued to him. In the Appeal Memo as well as the Plaint filed before the City Civil Court, the Appellant has stated that he is about 30 years of age. A simple mathematical calculation would then indicate that he applied for the shops licence when he was barely ten years old. When this was brought to the notice of the Advocate for the Appellant, he tried to rely on the affidavit of one Rajaram Gopal Gupta dated 12th February 1991 showing that he transferred the shop premises to the Appellant on that date. Therefore, the applications made

for repair permission as well as for the shops licence were based on misrepresentations by the Appellant. The Appellant would never have been in possession of the suit premises for ten or fifteen years prior to 1994, when the applications were made.

3. Apart from this, the trial Court has considered the fact that the Appellant does not deserve any interim relief as the structure itself has been demolished. In fact, as pointed out by Mr.Xavier for the Respondent, on 1st September 2004 an application was made by the Appellant seeking alternate accommodation after his structure had been demolished on 25th August 2004. When confronted with this, the Advocate for the Appellant states that the Appellant has not given any such application to the Corporation. Be that as it may, there is no doubt that the suit structure is not in existence today and, therefore, no interim relief need be given to the Appellant. Furthermore, the law is not meant to be subverted in order to protect dishonest persons. The Suit is filed for an injunction against the demolition of the suit structure. Since it has already been demolished, there is no reason to grant any temporary injunction. Hence, Appeal From Order dismissed.

4. In view of the Appeal From Order being disposed of, nothing survives in Civil Application No.1306 of 2004 and the same is disposed of accordingly.